

Ashanti Clemons appeals his conviction of carrying a handgun without a license as a Class C felony.¹ He claims the court abused its discretion when it admitted a videotape and transcript of statements he gave to police because the police violated his Fifth Amendment right to counsel when they failed to stop the interview. Clemons' procedural questions and comments about lawyers did not contain an unequivocal request for an attorney. Therefore, the police did not violate his Fifth Amendment right, and the court did not abuse its discretion when it admitted the evidence. We accordingly affirm.

FACTS AND PROCEDURAL HISTORY

On August 30, 2005, Clemons was living with his mother, Letiate Tate. Clemons argued with Prentice Webster in the upstairs hallway of Tate's apartment building. Shortly thereafter Webster died of multiple gunshot wounds. Police canvassed the apartment complex for witnesses and were told someone had been entering and exiting Tate's apartment. Police knocked on Tate's door, and when she opened it, they observed bullets on the floor.

Tate told police where they could find Clemons, and Clemons agreed to go to the police station for questioning. Once there, Clemons signed a written waiver of rights form. Clemons admitted carrying a gun without a license and admitted Webster was shot during their argument.

The State charged Clemons with voluntary manslaughter as a Class A felony,² carrying a handgun without a license as a Class A misdemeanor, and carrying a handgun

¹ Ind. Code §§ 35-47-2-1, 35-47-2-23(c).

² Ind. Code § 35-42-1-3.

without a license as a Class C felony. A jury found Clemons guilty of carrying a handgun, but it could not reach a verdict as to voluntary manslaughter. Clemons waived his right to a jury trial for the carrying a handgun enhancement. The court found Clemons had a prior conviction of carrying a handgun without a license and convicted him of carrying a handgun without a license as a Class C felony. The court then sentenced Clemons to eight years in the Department of Correction.

DISCUSSION AND DECISION

Clemons asserts the trial court erred by admitting the videotape and transcript of his interview with police.³ Trial courts have broad discretion to admit or exclude evidence, and we review the court's decision only for an abuse of that discretion. *Edmonds v. State*, 840 N.E.2d 456, 459 (Ind. Ct. App. 2006), *trans. denied* 855 N.E.2d 1003 (Ind. 2006), *cert. denied* --- U.S. ---, 127 S. Ct. 497 (2006). An abuse of discretion occurs if the trial court's decision was clearly against the logic and effect of the facts and circumstances before the court.

Clemons argues the incriminating evidence collected during his interview should not have been admitted because those statements were made after he requested counsel. He believes the continuation of his interview after his statements regarding counsel constituted a violation of his Fifth Amendment right to counsel.

The right to have counsel present during an interrogation is indispensable to the protection of the Fifth Amendment privilege against self-incrimination. When a suspect invokes his right to counsel during custodial interrogation, the police must stop questioning until counsel is present or the suspect

³ Clemons raised this argument both in a pre-trial motion to suppress and via objection when the State tendered the evidence during trial.

reinitiates communication and waives his right to counsel. Invocation of the *Miranda* right to counsel requires, at a minimum, some statement that can reasonably be construed to be an expression of a desire for the assistance of an attorney. If a suspect makes a request for counsel that is ambiguous or equivocal and, if in light of the circumstances, a reasonable officer would not understand the statement to be a request for an attorney, then the police are not required to stop questioning the suspect. The Supreme Court in *Davis* noted that it will be good police practice for the interviewing officers to clarify whether or not he actually wants an attorney when a suspect makes an ambiguous statement, but it declined to adopt a rule requiring officers to ask clarifying questions.

Edmonds, 840 N.E.2d at 460 (internal citations and quotations omitted).

During Clemons' interview with police on the morning after Webster was shot, the following dialogue occurred:

- [Detective]: You're 27 years old. I want to express how much of a man you were here to us today. How truthful and honest you were here to us today, I want to be able to express that.
- [Clemons]: Oh you're going to be able to express it, only thing I, I just want my momma sitting right here, you know what I'm saying can I have somebody sitting here with me though?
- [Detective]: I, I understand that ...
- [Clemons]: That, that's all I'm asking, I mean I ain't asking saying I want, I want to talk to my lawyer. I ain't said none of that.
- [Detective]: I know.
- [Clemons]: You see what I'm saying, I mean I, like you read, read me my rights, you see what I'm saying, I don't have to, I've got the right, you see what I'm saying to stop talking at any time or whatever.
- [Detective]: Exactly.
- [Clemons]: You see what I'm saying, ask for a lawyer or something like that, you see what I'm saying. Hey look could I still have a lawyer? Sit here and talk to me right now?
- [Detective]: I'm sorry what?
- [Clemons]: If, you know what I'm saying I don't have a paid lawyer could I still have a, you all said I could have a lawyer or somebody come talk to me right now, sit here while I . . .
- [Detective]: As I stated at any time you can have a lawyer present when talking to us. Okay. Now . . .
- [Clemons]: Even when it's paid or not?

[Detective]: A lawyer is not going to let you talk to us. But if you want one, we'll walk out of here right now and it's all yours. You know. If you do, but what you think you need to do. I will not violate your civil rights. I've made a promise to your mother and I'm going to stand up to the promise. I mean it looks like this guy got shot through the leg and shot through the arm and got hit in the neck.

[Clemons]: Let me see [the pictures].

(Ex. at 102-03.)

We find no unequivocal request for counsel in those statements. Rather, his statements indicate he understood he had signed the waiver of rights form prior to speaking with the officers and he understood the police had to stop questioning him if he requested counsel. His questions regarding whether he could obtain counsel were procedural questions that were not an unequivocal request for counsel. *See Stroup v. State*, 810 N.E.2d 355, 359 (Ind. Ct. App. 2004) (defendant's question regarding how long would it be before she could get a court-appointed lawyer "is clearly a procedural question rather than an unequivocal request for counsel"). Therefore, the court did not abuse its discretion when it admitted the videotape and transcript of Clemons' admissions. *See Edwards*, 840 N.E.2d at 461.

Affirmed.

NAJAM, J., and MATHIAS, J., concur.